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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN JOSE DIVISION
14

15 WINDSOR AUCTIONS, INC., a Florida
16 corporation, and JEWELRY AUCTIONS
17 CORPORATION, a New Jersey corporation,
18 and UNIVERSAL COLLECTIBLES, LLC, a
19 Delaware Limited Liability Company,

20 Plaintiffs,

21 v.

22 EBAY INC., a Delaware corporation,

23 Defendant.

Case No. C 07 06454 RMW

**DEFENDANT EBAY INC.'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF ITS
MOTION TO DISMISS PLAINTIFFS'
AMENDED COMPLAINT**

Date: October 3, 2008

Time: 9:00 a.m.

Dept.: 6

Judge: Hon. Ronald M. Whyte

Amended Complaint Filed: July 24, 2008

I. DOCUMENT TO BE JUDICIALLY NOTICED

Pursuant to Federal Rule of Evidence 201(b), defendant eBay Inc. (“eBay”) hereby requests that the Court take judicial notice of the following document in connection with eBay’s Motion to Dismiss Plaintiffs’ Amended Complaint (“FAC”):

Form Live Auctioneers LLC agreement, referred to in paragraph 11 of the FAC and provided to eBay by Plaintiffs (the “Live Auctioneers Agreement”), a true and correct copy of which will be lodged with the Court under seal.¹

II. ARGUMENT

This Court may consider facts and documents subject to judicial notice in connection with a party’s motion to dismiss. *See e.g., MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (on a motion to dismiss, court may take judicial notice of matters of public record outside the pleadings). Judicial notice is appropriate for facts “not subject to reasonable dispute” that are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Under Federal Rules of Evidence 201(d), “[a] court shall take judicial notice if requested by a party and supplied with the necessary information.” Fed. R. Evid. 201(d). “[D]ocuments whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading, may be considered in a ruling on a Rule 12(b)(6) motion to dismiss.” *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), *overruled on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002).

Judicial notice of the Live Auctioneers Agreement provided to eBay by Plaintiffs Windsor Auctions, Inc. (“Windsor”) and Jewelry Auctions Corp. (“JA”) is appropriate because the agreement is referenced in paragraph 11 of Plaintiffs’ FAC. Although it was not physically attached to the pleading, its authenticity is not questioned by any party. Thus it is appropriate for

¹ Because an assessment of Plaintiffs’ allegations requires perusal of the terms of this confidential Agreement referenced in paragraph 11 of the FAC, and because, as explained herein, the terms of the Live Auctioneers Agreement are appropriate for consideration on a motion to dismiss, a true and correct copy of the Live Auctioneers Agreement will be lodged with the Court under seal, pending the granting of the Administrative Motion to File Under Seal pursuant to Civ. L.R. 79-5, filed herewith.

1 consideration on a ruling on a Rule 12(b)(6) motion to dismiss. *Branch*, 14 F.3d at 454.

2 **III. CONCLUSION**

3 For these reasons, eBay respectfully requests that the Court grant its request and take
4 judicial notice of the Live Auctioneers Agreement described herein.

5 Dated: August 11, 2008

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